HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.11995 OF 2007

Between:

Susheel Kumar Rajwadi

…Petitioner

AND

Greater Hyderabad Municipal Corporation
Per Commissioner, with Office at MCH Complex,
Tank Bund Road, Hyderabad

...Respondents

: O R D E R :

Counsel for the petitioner : Shri P. Pandurang Rao

June 12, 2007

Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for quashing notice dated 04.06.2007 issued by Assistant City Planner, Circle III, Greater Hyderabad Municipal Corporation (for short, 'the Corporation') under

Section 452 of the Hyderabad Municipal Corporations Act, 1955 (for short, 'the Act') requiring him to remove unauthorised T.V. repair shop in the premises bearing No.1-1-230/16, Chikkadpally, Hyderabad.

The petitioner claims to be the tenant of the disputed premises. He claims to have taken the premises on rent in 1980. For the last about one decade, he has been litigating with the landlord in relation to the alleged demand made by the latter for vacating the premises. In 1995, Dr. P. Nagaraja Rao and five others filed O.S.No.5203 of 1995 against the landlord of the buildings for grant of permanent injunction restraining the landlord from making any construction in the stilt floor parking area and inducting third parties for commercial or any other purpose in the stilt floor area. That suit was decreed by II Junior Civil Judge, City Civil Court on 16.10.2001. The operative part of the decree reads as under:

> " In the result, in view of my findings on issue Nos. 1 to 3, suit is decreed granting a perpetual injunction against D.1 to D.5 and D.7 to D.10 from making any constructions in stilt floor or fourth floor and a mandatory injunction is also granted for removal of the TV repair shop situated on the north-eastern corner of the suit site. Suit against D.6 is dismissed without costs in view of my findings on issue No.3. In the peculiar circumstances, I direct each party to bear its own costs."

The petitioner, who was not a party to the aforementioned suit filed I.A.No.5041 of 2001 for grant of a declaration that judgment dated 16.10.2001 rendered in O.S.No.5203 of 1995 is not enforceable against him. The same was dismissed by II Junior Civil Judge, City Civil Court, Hyderabad vide order dated 15.02.2007, the relevant portion of which is extracted below:

> "A reading of the entire affidavit filed by the petitioner would make it clear that the petitioner is in

possession of the premises bearing No.1-1-230/16 Chikkadpally, Hyderabad, as tenant and the documents filed by the petitioner pre-supposed the occupation of the petitioner as tenant in the suit schedule property. But this petition is filed subsequent to passing of the decree and even before filing of the execution petition by the Dhr. As per the counter allegations, there is no appeal pending against the Decree passed by this court and the decree become final since the petitioner steps into the shoes of the landlord i.e. his landlord, he cannot at this stage file this petition questioning the inexecutability of the decree passed in favour of landlord, as such, the petition filed by the petitioner is a premature. Apart from that the relief sought for by the petitioner is to hold that the judgment and decree passed in O.S.5203/95 is not enforceable against him, cannot sought for by the petitioner as the decree passed by this court is an executable decree and there is no illegality in the decree and the decree attains finality. The learned counsel for petitioner submitted a decision reported in APLJ 1986 (2) page 51 to treat the petition as caveat. But this petition was filed with a specific prayer to hold that the judgment and decree passed in this suit is not enforceable against him and the present petition is filed in the year 2001 and the facts stated in the above petition are not applicable to the present facts of the petition as in the said citation the third party has claimed his title. But here the petitioner is only a tenant in occupation of the premises, as such, I find that this petition cannot be treated as caveat and hence I find no merits in the petition and the petition is liable for dismissal."

In the meanwhile, the petitioner filed O.S.No.2630 of 1996 in the Court of II Junior Civil Judge, City Civil Court, Hyderabad against Municipal Corporation of Hyderabad and others for restraining the authorities of Municipal Corporation and others from demolishing the tenanted premises and forcibly evicting him. The same was decreed

by the trial Court on 03.08.2004 and the defendants were restrained from interfering with his possession and enjoyment except on being evicted by adopting due process of law.

It is also borne out from the record that the petitioner has challenged notice issued to him under Sections 670 and 782 of the 1955 Act and stay order dated 04.03.2005 has been passed in his favour by Chief Judge, City Small Causes Court, Hyderabad in I.A.No.206 of 2005 in M.A.No.52 of 2005.

The petitioner's challenge to notice issued by the Corporation under Section 452 is mainly founded on his assertion that the concerned officer of the Corporation has done so with a view to help the landlord, whose attempt to secure eviction was frustrated due to the decree passed by the II Junior Civil Judge, City Civil Court, Hyderabad. He has averred that the disputed construction has been made by the landlord and not by him and, therefore, the Corporation is not entitled to proceed against him. He has denied the allegation contained in the notice and averred that he is not using mulgi constructed in the parking area.

We have heard Shri P. Panduranga Rao. In our opinion, the writ petition is liable to be dismissed on the ground of availability of an effective alternative remedy of civil suit. The narration of the facts made in the earlier part of this order shows that the petitioner has already availed the remedy by filing suit for injunction and miscellaneous petition in the counter suit filed by Dr. P. Nagaraja Rao and others. It is, thus, evident that the petitioner has treated the remedy available to him in the Civil Court as an effective alternative remedy. Therefore, we do not see any justification to entertain the writ petition and adjudicate on the legality of impugned notice by examining the contentious issue of fact as to whether the disputed construction has

been raised by the petitioner and, if so, whether the same is in violation of the injunction granted by the learned II Additional Junior Civil Judge, City Civil Court, Hyderabad in O.S.No.5203 of 1995.

With the above observations, the writ petition is dismissed leaving the petitioner free to avail remedy of civil suit.

As a sequel to dismissal of the writ petition, W.P.M.P.No.14916 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

June 12, 2007
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